

Amendment No. 1 to HB3428

Coleman
Signature of Sponsor

AMEND Senate Bill No. 3003*

House Bill No. 3428

By deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 1, Part 1, is amended by adding a new section thereto, as follows:

Section 36-1-143.

(a) If unable to employ counsel, the defendant is entitled to have counsel appointed by the court.

(b)(1) A defendant, who is provided with court-appointed counsel, including a defendant in a termination of parental rights case, shall be assessed by the court at the time of appointment a nonrefundable administrative fee in the amount of fifty dollars (\$50.00). The administrative fee shall be assessed only one time per case and shall be waived or reduced by the court upon a finding that the defendant lacks financial resources sufficient to pay the fifty dollar (\$50.00) fee. The fee may be increased by the court to an amount not in excess of two hundred dollars (\$200) upon a finding that the defendant possesses sufficient financial resources to pay the fee in the increased amount. The administrative fee shall be payable, at the court's discretion, in a lump sum or in installments; provided, however, that the fee shall be paid prior to disposition of the case or within two (2) weeks following appointment of counsel, whichever occurs first. Prior to disposition of the case, the clerk of the court shall inform the judge whether the administrative fee assessed by the court has been collected.

(2) The administrative fee shall be separate from and in addition to any other contribution or recoupment assessed pursuant to law for defrayal of costs

associated with the provision of court-appointed counsel. The clerk of the court shall retain a commission of five percent (5%) of each dollar of administrative fees collected and shall transmit the remaining ninety-five percent (95%) of each dollar to the state treasurer for deposit in the state's general fund. Failure to pay the administrative fee assessed by the court shall not reduce or in any way affect the rendering of services by court-appointed counsel; provided, however, that the defendant's willful failure to pay the fee may be considered by the court as an enhancement factor when imposing sentence if the defendant is found guilty of criminal conduct, and may also be considered by the court as evidence of the defendant's financial responsibility, or lack thereof, in a case for termination of the defendant's parental rights.

(3) If the administrative fee is not paid prior to disposition of the case, then the fee shall be collected in the same manner as costs are collected; provided, however, that upon disposition of the case, moneys paid to the clerk, including any cash bond posted by the defendant, shall be allocated to taxes, costs and fines and then to the administrative fee and any recoupment ordered. The administrative fee and any recoupment or contribution ordered for the services of court-appointed counsel shall apply and shall be collected even if the charges against the defendant are dismissed.

(4) As part of the clerk's regular monthly report, each clerk of court, who is responsible for collecting administrative fees pursuant to this section, shall file a report with the court and with the administrative director of the courts. The report shall indicate the following:

(A) Number of defendants for whom the court appointed counsel;

(B) Number of defendants for whom the court waived the administrative fee;

(C) Number of defendants from whom the clerk collected administrative fees;

(D) Total amount of commissions retained by the clerk from the administrative fees; and

(E) Total amount of administrative fees forwarded by the clerk to the state treasurer.

(c) The provisions of this section shall be liberally construed for the accomplishment of its policy and purpose, and shall be construed in conjunction with the provisions of Section 40-14-103 relative to the termination of parental rights.

SECTION 2. This act shall take effect July 1, 2010, the public welfare requiring it.